TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 122

CLEMENT STUDEBAKER, PLAINTIFF IN ERROR,

vs.

JOHN PERRY, AS RECEIVER OF THE NATIONAL BANK OF KANSAS CITY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED JULY 31, 1900.

(17,852.)

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Transcript of Record.

ie United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1899.

CLEMENT STUDEBAKER, Plaintiff in Error,
vs.
PERRY, as Receiver of the National Bank of Kansas City, Defendant in Error. } No. 672.

r. Hugh C. Ward, Mr. Daniel Rich, counsel for plaintiff in
.
r. George W. Wall, Mr. Walter W. Ross, Mr. Marshall J. Kirk-, counsel for defendant in error.

r to the circuit court of the United States, northern district of Illinois, northern division.

anscript of record filed March 15, 1900. Printed record filed 26, 1900.

EDWARD M. HOLLOWAY, *Clerk.*

Pleas.

eas in the circuit court of the United States for the northern ict of Illinois, northern division, began and held at the United s court-room, in the city of Chicago, in said district and division, e the Honorable Christian C. Kohlsaat, district judge of the ed States for the northern district of Illinois, on Saturday, the nteenth day of February, in the year of our Lord one thousand hundred, being one of the days of the regular December term id court, 1899, and of our Independence the one hundred and ty-fourth year.

S. W. BURNHAM, *Clerk.*

Præcipe for Summons. Filed Nov. 9, 1899.

PERRY, as Receiver of the National Bank of Kansas City,
vs.
CLEMENT STUDEBAKER. } #25357. Assumpsit.

it remembered that on this day to wit: the ninth day of No-er, in the year of our Lord one thousand eight hundred and y-nine came the plaintiff in said entitled cause by his attorneys iled in the clerk's office of said court his præcipe for summons bond for costs, which said præcipe and bond for costs are re-ively in the words and figures following to wit:

Pracipe.

United States Circuit Court, Northern District of Illinois.

JOHN PERRY, as Receiver of the National Bank of Kansas City, Plaintiff,
vs.
CLEMENT STUDEBAKER, Defendant.
} Pracipe.

The clerk of said court will issue a summons in the above-entitled cause in a plea of trespass on the case on promises to the damage of the plaintiff in the sum of two thousand ($2,000.00) dollars, and direct the same to the marshal to execute and make it returnable to the Dec. term of said court, A. D. 189–.

WALL & ROSS,
Plaintiff's Attorneys.

Nov. 9, 1899.

(Endorsed:) Filed Nov. 9, 1899. S. W. Burnham, clerk.

3 *Bond for Costs. Filed Nov.* 9, 1899.

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

Circuit Court, December Term, A. D. 1899.

JOHN PERRY, as Receiver of the National Bank of Kansas City,
vs.
CLEMENT STUDEBAKER.
} In —.

I herewith enter myself as security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the said plaintiff of any costs ordered or adjudged to be paid by said plaintiff hereby agree and stipulate that execution may issue against my property for all costs not exceeding two hundred dollars taxed against said plaintiff.

Dated the — day of ——, A. D. —.

MARSHALL M. KIRKMAN,
Residence: Evanston, Ills.

I, M. M. Kirkman, a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate, situated in the northern district of Illinois, the sum of four hundred dollars, over and above my just debts and liabilities.

M. M. KIRKMAN.

Sworn to and subscribed before me this ninth day of November, 1899.

MARSHALL J. KIRKMAN,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Nov. 9, 1899. S. W. Burnham, clerk.

On the same day to wit: the ninth day of November, 1899, came the plaintiff in said entitled cause by his attorney and filed in the clerk's office of said court a certain declaration in words and figures following to wit:

4 *Declaration. Filed Nov. 9, 1899.*

Declaration.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } *ss:*

In the Circuit Court of the United States in and for the Northern District of Illinois, Northern Division.

JOHN PERRY, as Receiver of the National Bank of Kansas City,
vs.
CLEMENT STUDEBAKER. } Declaration.

John Perry, as receiver of the National Bank of Kansas City, plaintiff, in this suit, by Wall & Ross, his attorneys, complains of Clement Studebaker, defendant, of a plea that he render unto the plaintiff the sum of two thousand ($2,000.00) dollars, which he owes to and unjustly detains from the plaintiff.

For that, whereas, heretofore to wit: on the 13th day of April, 1886, said The National Bank of Kansas City was organized as a national banking association, under the laws of the United States, with a capital stock of one million ($1,000,000.00) dollars divided into ten thousand (10,000) shares, of one hundred ($100) dollars each, and the Comptroller of the Currency of the United States did, pursuant to law, on, to wit: the 13th day of April, A. D. 1886, give and issue to said The National Bank of Kansas City, in the city of Kansas City, in the county of Jackson, and State of Missouri, a certificate under his hand and official seal that said The National Bank of Kansas City had complied with all the provisions of law required to be complied with before commencing the business of banking; and that such association was authorized to commence the business of banking; and thereupon the said The National Bank of Kansas City did commence the business of banking, under and pursuant to the laws of the United States, and did continue to carry on the business of banking under the laws of the United States until afterwards, to wit: the 18th day of March, A. D. 1895.

And the plaintiff further avers that on to wit: the 18th day of March, A. D. 1895, said The National Bank of Kansas City being

then insolvent, suspended business and the payment of its
5 obligations; and afterwards, on, to wit: the 18th day of March, A. D. 1895, George W. Galbreath was, by the Comptroller of the Currency of the United States, in pursuance of the laws of the United States, duly appointed receiver of the said The National Bank of Kansas City, and entered upon the discharge of his duties as such receiver, and that afterwards, to wit: on the 12th day of April, A. D. 1895, the said George W. Galbreath resigned his said trust and office as receiver of said bank, as aforesaid, and thereupon, and on, to wit: the 12th day of April, A. D. 1895, the plaintiff was by the Comptroller of the Currency of the United States, in pursuance of the laws of the United States, duly appointed and commissioned receiver of said The National Bank of Kansas City to take effect on the 17th day of April, A. D. 1895.

And thereupon, upon the same day last aforesaid, qualified and entered upon the discharge of his duties as such receiver, and from thence hitherto has been and still is acting as such receiver of the said The National Bank of Kansas City, located in the city of Kansas City, in the county of Jackson, and State of Missouri, of which State he is a citizen.

And the plaintiff further avers that the defendant is now and for many years past has been a resident and citizen of the city of South Bend, county of St. Joseph and State of Indiana, and that at the time said The National Bank of Kansas City suspended business and payment of its obligations on, to wit: the 18th day of March, A. D. 1895, was, and now is, the owner of one hundred and eighty-nine (189) shares of the capital stock of the said The National Bank of Kansas City, of the par value of one hundred dollars ($100) each of which stood and stands in his name upon the books of said banking association.

And the plaintiff further avers that the defendant has in writing agreed to submit in this cause to the jurisdiction of this court in this district first above set forth.

And the plaintiff further avers that afterwards, to wit: on the 11th day of February, 1896, it appeared to the satisfaction of the Comptroller of the Currency of the United States, that in order to pay the debts of said The National Bank of Kansas City, it was necessary to enforce the individual liability of the shareholders of said banking association, as provided by the statutes of the United States to the extent of sixteen ($16) dollars, upon each and every share of the capital stock of the said The National Bank of Kansas City, held or owned by said shareholders at the time said banking association suspended business and the payment of its obligations; and thereupon the Comptroller of the Currency of the United States did, on to wit: the 11th day of February, A. D. 1896, make an assessment and requisition upon the shareholders of said The National
6 Bank of Kansas City for one hundred and sixty thousand ($160,000) dollars to be paid by them ratably, and did direct the plaintiff to take all necessary proceedings by suit or otherwise, to enforce the said individual liability of the said shareholders, and that pursuant to said assessment and requisition the defendant did

pay unto the plaintiff the sum of three thousand and twenty-four ($3,024) dollars, being sixteen ($16) dollars upon each share of the one hundred and eighty-nine share of stock of said banking association held by him.

And the plaintiff further avers that thereafter, on, to wit: the 25th day of February, A. D. 1899, the said Comptroller of the Currency found and determined that the said sum of one hundred and sixty thousand ($160,000) dollars which was levied and assessed by said Comptroller of the Currency against the shareholders as aforesaid, on the 11th day of February, A. D. 1896, was inadequate and insufficient to pay the debts of the said The National Bank of Kansas City, and that in order to pay the debts of the said The National Bank of Kansas City, it was necessary to enforce the individual liability of the shareholders of said banking association as provided by the statutes of the United States, to the extent of seven ($7.00) dollars per share upon each and every share of the capital stock of said The National Bank of Kansas City held or owned by said shareholders at the time said banking association suspended business and the payment of its obligations; and thereupon, the Comptroller of the Currency of the United States did, on to wit: the 25th day of February, A. D. 1899, make such further assessment and requisition upon the shareholders of the said The National Bank of Kansas City, for seventy thousand ($70,000) dollars, to be paid by them ratably, on or before the 25th day of March, A. D. 1899, and did direct the plaintiff to take all necessary proceedings by suit or otherwise to enforce the said individual liability of the said shareholders.

And the plaintiff further avers that at the time said The National Bank of Kansas City suspended business and payment of its obligations, as aforesaid, the defendant was the owner and holder of one hundred and eighty-nine (189) shares of the capital stock of the said The National Bank of Kansas City, by means whereof, and by force of the laws of the United States the defendant then and there became liable to the plaintiff to the amount of said assessment and requisition upon him as aforesaid, being the sum of one thousand, three hundred and twenty-three ($1,323.00) dollars, said amount being seven dollars ($7.00) upon each share of the capital stock of the said The National Bank of Kansas City owned and held by said defendant, at the time the said The National Bank of Kansas City suspended business and the payment of its obligations, as aforesaid.

7 Yet the defendant, though often requested, has not paid the said sum of money, or any part thereof, to the plaintiff, but so to do has hitherto wholly refused and still does refuse, to the damage of the plaintiff of two thousand ($2,000) dollars, and therefore he brings his suit, etc.

WALL & ROSS,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA, }
State of Illinois, County of Cook, } ss:

Walter W. Ross being duly sworn on oath says that he is one of the attorneys for John Perry, the receiver of the National Bank of Kansas City, plaintiff in the above-entitled cause, that the demand of the plaintiff is upon the cause of action set forth in the foregoing declaration, and that there is due to the plaintiff from the defendant upon said cause of action, after allowing the defendant all just credits, deductions and set-offs, the sum of one thousand three hundred and twenty-three ($1,323.00) dollars, together with interest thereon from and after the 25th day of March, A. D. 1899, at the rate of six (6%) per cent. per annum.

WALTER W. ROSS.

Subscribed and sworn to before me, this 9 day of Nov., A. D. 1899.

S. W. BURNHAM, *Clerk.*

(Endorsed:) Filed Nov. 9, 1899. S. W. Burnham, clerk.

Afterwards, to wit, on the twenty-second day of November, 1899, came the defendant by his attorneys and entered his appearance in the clerk's office in said cause in words and figures following, to wit:

8 *Appearance for Defendants. Filed Nov. 22, 1899.*

Appearance.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Northern Division.

JOHN PERRY, as Receiver of the National Bank of Kansas City, }
vs.
CLEMENT STUDEBAKER. }

We hereby enter our appearance in the above-entitled cause for Clement Studebaker, defendant, and submit to the jurisdiction of this court in this district.

HUGH C. WARD AND
RICH & RICH,
Att'ys for Defendant.

(Endorsed:) Filed Nov. 22, 1899. S. W. Burnham, clerk.

Afterwards, to wit, on the sixteenth day of December, 1899, came the defendant by his attorneys and filed in the clerk's office of said court his demurrer in words and figures following, to wit:

9 *Demurrer. Filed Dec.* 16, 1899.

Demurrer.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } *ss:*

In the Circuit Court of the United States in and for the Northern District of Illinois, Northern Division.

JOHN PERRY, as Receiver of the National Bank of Kansas City,
vs.
CLEMENT STUDEBAKER. } Demurrer.

And the said defendant, Clement Studebaker, by Hugh C. Ward and Daniel Rich, his attorneys, comes and defends the wrong and injury, when, etc., and says that the plaintiff's said declaration and the matters and things therein contained in manner and form as the same are above set forth are not sufficient in law for him the said plaintiff to maintain his aforesaid action against this defendant, and that he, the said defendant, is not bound by law to answer the same, and this he is ready to verify; wherefore for want of a sufficient declaration in this behalf the said defendant prays judgment, etc.

HUGH C. WARD AND
DANIEL RICH,
Attorneys for Defendant.

(Endorsed:) Filed Dec. 16, 1899. S. W. Burnham, clerk.

Afterwards, to wit, on the tenth day of February, 1900, in the December term of said court, 1899, in the record and proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

10 *Hearing on Demurrer, Feb.* 10, 1900.

Order of February 10, 1900.

JOHN PERRY, as Receiver of the National Bank of Kansas City,
vs.
CLEMENT STUDEBAKER. } Assumpsit. 25357.

Now come the parties by their attorneys and comes on to be heard the demurrer to the declaration herein, and the court having heard the same and not being sufficiently advised takes time to consider.

Afterwards, to wit, on the seventeenth day of February, 1900, in the December term of said court, 1899, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

Order of Feb. 17, 1900, *Overruling Demurrer.*

Order of February 17, 1900.

JOHN PERRY, as Receiver of the National Bank of Kansas City,
vs.
CLEMENT STUDEBAKER.
} Assumpsit. 25357.

Now again come the parties by their attorneys, and the court having considered and being now fully advised upon the demurrer to the declaration herein overrules the same, and the defendant being now ruled to further plead, instanter and he failing and refusing to comply with said rule, elects to stand by his demurrer. It is thereupon considered and adjudged by the court that the plaintiff have judgment against the defendant upon said demurrer, and that he have and recover the damages herein for want of further plea in the sum of one thousand five hundred four dollars and sixteen cents ($1,504.16), together with the costs herein to be taxed, and that execution issue therefor.

And now comes the defendant in open court and enters his motion for a writ of error to the United States circuit court of appeals for the seventh circuit, and the court fixes the amount of the bond on writ of error at the sum of twenty-five hundred dollars, to be filed within thirty days, together with his assignment of errors. Said bond when filed to operate as a supersedeas & execution is stayed for thirty days.

11 And on the second day of March, 1900, came Clement Studebaker by his attorney and filed in the clerk's office of said court his petition for writ of error in words and figures following, to wit:

Petition for Writ of Error. Filed March 2, 1900.

Petition for writ of error.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

JOHN PERRY, Receiver of the National Bank of Kansas City, Plaintiff,
vs.
CLEMENT STUDEBAKER, Defendant.
} No. 25357.

Petition for Writ of Error.

Comes now Clement Studebaker, the defendant in the above-entitled cause, and complaining of the plaintiff, John Perry, receiver of the National Bank of Kansas City, says that on the 17th day of February, 1900, said plaintiff recovered a judgment against the said

defendant herein, in said court, for the sum of one thousand five hundred four and $\frac{16}{100}$ dollars ($1,504.16) and also recovered judgment for cost in said action to be taxed by the clerk; and this defendant alleges that he was prejudiced by the various orders and rulings in said cause, and that there is error in the proceedings, by which said judgment was obtained, and that the said judgment is erroneous, and the said order and rulings, prejudicial in respect to matters and things as shown by the assignment of errors filed herewith, and by the record in said cause.

And by reason of said errors, the said defendant prays that he may be allowed a writ of error from said judgments of said court in said cause, to the United States circuit court of appeals for the seventh circuit, and that a transcript of the record and proceedings duly authenticated may be sent to said court of appeals, whereupon said judgment may be reversed and said cause remanded to
12 this court for a new trial. And whereby this defendant may be given such other and further relief as may be just and proper.

CLEMENT STUDEBAKER,
By DANIEL RICH AND
HUGH C. WARD,
His Attorneys.

(Endorsed:) Filed Mar. 2, 1900. S. W. Burnham, clerk.

On the same day to wit: the second day of March, 1900, came Clement Studebaker, by his attorney and filed in the clerk's office of said court his assignment of errors in words and figures following to wit:

Assignment of Errors. Filed March 2, 1900.

Assignment of errors.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

JOHN PERRY, Receiver of the National Bank of Kansas City, Plaintiff,
vs.
CLEMENT STUDEBAKER, Defendant.
No. 25357.

Assignment of Errors.

The defendant, Clement Studebaker, assigns as errors the following rulings and orders made by the trial court on the trial of this cause, to wit:

1. The trial court erred in overruling defendant's demurrer to plaintiff's declaration, which demurrer in words and figures, was as follows, to wit:

"And the said defendant, Clement Studebaker by Hugh C. Ward and Daniel Rich, his attorneys, comes and defends the wrong and injury, when etc., and says, that the plaintiff's said declaration and

the matters and thing- therein contained in manner and form as the same are above set forth are not sufficient in law for him, the said plaintiff to maintain his aforesaid action against this defendant, and that he, the said defendant, is not bound by law to answer
13 the same, and this he is ready to verify: wherefore, for want of a sufficient declaration in this behalf the said defendant prays judgment, etc."

2. The trial court erred in holding plaintiff's declaration sufficient in law, and in ruling that defendant further plead to plaintiff's declaration.

3. The trial court erred in rendering a judgment against defendant upon defendant refusing to plead further, for the reason that the matters and things in plaintiff's declaration, contained in manner and form as therein set forth are not sufficient in law for said plaintiff to maintain his action against the defendant.

4. The trial court erred in rendering a judgment against defendant for the reason that plaintiff's declaration, and the matters and things therein contained in manner and form as the same are set forth therein, are not sufficient in law for said plaintiff to maintain his action against this defendant, and to entitle him to judgment against this defendant.

DANIEL RICH,
HUGH C. WARD,
Attorneys for Defendant.

(Endorsed:) Filed March 2, 1900. S. W. Burnham, clerk.

On the same day, to wit, the second day of March, 1900, came Clement Studebaker, as principal, and Timothy W. Witwer, as surety, and filed in the clerk's office of said court a certain bond on writ of error in words and figures following, to wit:

Bond on Writ of Error. Filed March 2, 1900.

Bond on writ of error.

Know all men by these presents that we, Clement Studebaker as principal, and Timothy W. Witwer as sure*ties*, are held and firmly bound unto John Perry, receiver of the National Bank of Kansas City, in the full and just sum of twenty-five hundred dollars, to be paid to the said John Perry, receiver, his certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of February, in the year of our Lord one thousand nine hundred.

Whereas lately, at a regular term of said court (the December term, 1899), of the United States circuit court, northern dis-
14 trict of Illinois, northern division, in a suit pending in said court between John Perry, receiver of the National Bank of Kansas City, plaintiff, and Clement Studebaker, defendant, a judg-

ment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiff, citing and admonishing him to be and appear at a United States circuit court of appeals for the seventh circuit, to be holden at Chicago within 30 days from the date hereof:

Now, the condition of the above obligation is such that if the said defendant shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CLEMENT STUDEBAKER. [SEAL.]
TIMOTHY W. WITWER. [SEAL.]

Sealed and delivered in presence of—
DANIEL RICH.

Approved March 2, 1900.

KOHLSAAT, *J.*

(Endorsed:) Filed March 2, 1900. S. W. Burnham, clerk.

On the same day, to wit, the second day of March, 1900, in the December term of said court, 1899, in the record of proceedings thereof in said entitled cause, before the Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

Order of March 2, 1900, Allowing Writ of Error.

Order of March 2, 1900.

JOHN PERRY, as Receiver of the National Bank of Kansas City,
vs.
CLEMENT STUDEBAKER. } Assumpsit. 25357.

Now comes the defendant, by Messrs. Rich and Rich, his attorneys, and presents his petition for writ of error, assignment of errors, and bond on writ of error, and thereupon it is ordered that a writ of error issue to the United States circuit court of appeals for the seventh circuit, returnable in thirty days from this date, and it is ordered that the bond filed herein shall be and operate as a supersedeas to the judgment entered herein.

15 *Writ of Error. Filed March 2, 1900.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you,

or some of you, between John Perry, receiver of the National Bank of Kansas City, plaintiff, and Clement Studebaker, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the seventh circuit, together with this writ, so that you have the same in the said United States circuit court of appeals for the seventh circuit at Chicago, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States circuit court of appeals for the seventh circuit may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the second day of March, in the year of our Lord one thousand nine hundred.

S. W. BURNHAM,
[SEAL.] *Clerk of the Circuit Court of the United States for the Northern Dist. of Illinois.*

Allowed by—
KOHLSAAT, *Judge.*

16 *Return to Writ of Error. Filed March 2, 1900.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In obedience to the within writ, I herewith transmit to the United States circuit court of appeals for the seventh circuit, a true and complete transcript of the record and proceedings in the foregoing-entitled cause this 15th day of March, A. D. 1900.

S. W. BURNHAM,
Clerk United States Circuit Court, Northern District of Illinois.

(Endorsed:) Filed March 2, 1900. S. W. Burnham, clerk.

Clerk's Certificate.

NORTHERN DISTRICT OF ILLINOIS, *Northern Division,* } *ss:*

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of all the proceedings had of record on said court in the cause entitled John Perry, as receiver of the National Bank of Kansas City *vs.* Clement Studebaker, as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district, this 15th day of March, 1900.

[SEAL.] S. W. BURNHAM, *Clerk.*

Citation. Filed March 2, 1900.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to John Perry, receiver of the National Bank of Kansas City, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals, for the seventh circuit, to be holden at Chicago, Illinois, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, northern division, wherein Clement Studebaker is plaintiff in error, and you are defendant in error, to show cause, if any
17 there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat, judge of the circuit court of the United States, this second day of March, in the year of our Lord one thousand nine hundred.

KOHLSAAT, *Judge.*

We hereby acknowledge due service of the within citation this 2d day of March, 1900.

WALL & ROSS,
Att'ys for Defendant in Error.

(Endorsed:) Filed March 2, 1900. S. W. Burnham, clerk.

18 At the regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on the third day of October, 1899, in the October term, in the year of our Lord one thousand eight hundred and ninety-nine, and of our Independence the one hundred and twenty-fourth year.

And afterwards, to wit, on the seventeenth day of March, 1900, in the October term last aforesaid, came the plaintiff in error, by his counsel, Mr. Hugh C. Ward and Mr. Daniel Rich, and filed in the office of the clerk of this court their appearance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1899.

CLEMENT STUDEBAKER, Plaintiff in Error,
vs.
JOHN PERRY, as Receiver of the National Bank of Kansas City, Defendant in Error. } No. 672.

The clerk will enter my appearance as counsel for the plaintiff in error.

HUGH C. WARD AND
DANIEL RICH.

Endorsed: Filed March 17, 1900. Edward M. Holloway, clerk.

19 And afterwards, to wit, on the 26th day of March, 1900, in the October term last aforesaid, came the defendant in error, by his counsel, Mr. George W. Wall, Walter W. Ross, and Marshall J. Kirkman, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1899.

CLEMENT STUDEBAKER, Plaintiff in Error,
vs.
JOHN PERRY, as Receiver of the National Bank of Kansas City, Defendant in Error. } No. 672.

The clerk will enter my appearance as counsel for the defendant in error.

GEO. W. WALL.
WALTER W. ROSS.
MARSHALL J. KIRKMAN.

Endorsed: Filed March 26, 1900. Edward M. Holloway, clerk.

20 TUESDAY, *May* 1, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Christian C. Kohlsaat, district judge.

Order.—It is ordered by the court that Christian C. Kohlsaat, judge of the district court of the United States for the northern district of Illinois, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Kohlsaat appeared and took his seat as a member of said court.

CLEMENT STUDEBAKER *vs.* JOHN PERRY, as Receiver of the National Bank of Kansas City.	672. Error to the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that this cause be, and the same is hereby, set down for hearing June 7, 1900.

21 MONDAY, *May* 7, 1900.

Court met pursuant to adjournment.

Present: Hon William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. Wm. H. Seaman, district judge.

ORDER.—It is ordered by the court that William A. Seaman, judge of the district court of the United States for the eastern district of Wisconsin, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Seaman appeared and took his seat as a member of said court.

THURSDAY, *June* 7, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

CLEMENT STUDEBAKER *vs.* JOHN PERRY, Receiver, etc.	672. Error to the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

NOW, this day, come the parties, by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral arguments by Mr. Hugh C. Ward, counsel for plaintiff in error, and by Mr. George W. Wall, counsel for defendant in error, and the court, having heard the same, takes this matter under advisement.

22 SATURDAY, *June* 23, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge.

Before Hon. William A. Woods, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

CLEMENT STUDEBAKER *vs.* JOHN PERRY, as Receiver of the National Bank of Kansas City.	672. Error to the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Illinois, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

And afterwards, to wit, on the same day, the twenty-third day of June, 1900, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court, which opinion was in the words and figures following, to wit:

23 In the United States Circuit Court of Appeals for the Seventh Circuit, May Session, A. D. 1900.

CLEMENT STUDEBAKER, Plaintiff in Error, *vs.* JOHN PERRY, as Receiver of the National Bank of Kansas City.	No. 672. Error to the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Before Woods and Grosscup, circuit judges, and Seaman, district judge.

WOODS, circuit judge, delivered the opinion of the court:

This action was brought by the receiver of the National Bank of Kansas City against the plaintiff in error, Clement Studebaker, to recover the amount of an assessment of seven dollars per share upon the capital stock of the bank, of which plaintiff in error is alleged to have held 189 shares. The declaration shows a previous assessment of sixteen dollars per share, which the plaintiff in error had paid. The court overruled a demurrer to the declaration, and, the plaintiff in error refusing to plead further, gave judgment against him.

The only question urged upon our consideration is whether the Comptroller of the Currency has power under sections 5151 and 5234 to make and to enforce by a suit at law more than one assessment upon the shareholders of an insolvent national bank, if necessary to pay the debts thereof. The argument for the plaintiff is in substance the same as that of Judge Philips in Deweese, receiver, *v.* Smith, 97 Fed., 309, where the ruling was that, having recovered against a stockholder a judgment at law for the amount of an assessment, the receiver could not maintain against him a second action to recover a further assessment. The chief grounds of the

24 decision were that the stockholder's liability is upon contract and cannot be split, and that in making and directing the enforcement of an assessment the comptroller performs a quasi-judicial function, and by one exercise exhausts the power conferred upon him by the statute. Weight was also given to the statement in the report of the comptroller for 1898 (vol. 1, p. 36) "that for 33 years after the adoption of the national banking act, by all his predecessors in office this statute had received the construction, in practice, that but one assessment was enforcible;" but in the main the conclusion declared was deduced from the opinion of the supreme court in Kennedy *v.* Gibson, 8 Wall., 498–505.

The weight of authority and the better reason seem to us to be in favor of the comptroller's right to make successive assessments, as found necessary; which may be forced in equity or by actions at law at the option of the receiver. It was conceded at the hearing that an action at law upon an assessment for less than the par value of the stock is maintainable.

In Kennedy *v.* Gibson it was said: "It is for the comptroller to decide when it is necessary to institute proceedings against the stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much, shall be collected. * * * This action on his part is indispensable, * * * and must precede the institution of suit by the receiver. * * * The liability of the stockholders is several and not joint. The limit of their liability is the par of the stock held by each one. Where the whole amount is sought to be recovered the proceeding must be at law. Where less is required the proceeding may be in equity, and in such case an interlocutory decree may be taken for contribution, and the case may stand over for the further action of the court—if such action should subsequently prove to be necessary—until the full amount of the liability is exhausted. * * * When contribution only is sought, all the stockholders who can be reached by the process of the court may be joined in the suit. It is no objection that there are others beyond the jurisdiction of the court who cannot for that reason be made codefendants. * * * The receiver is the statutory assignee of the association, and is the proper party to institute all suits; they may be brought both at law and in equity, in his name, or in the name of the association for his use."

Following this, in an opinion written by the same judge, in United States *v.* Knox, 102 U. S., 422, is a distinct recognition of the power of the comptroller to make successive assessments, and it is an anomalous proposition that the power may be affected or cut off at the will of the receiver by proceeding to collect an assessment by an action at law instead of a suit in equity. Indeed, the
25 contention here is that merely by making one assessment for less than the entire amount of the stock the comptroller deprives himself of the power to make another, and that no more than one assessment can be collected, unless the shareholders shall refuse to pay the first and the receiver shall choose to proceed in equity to collect it and so give the court opportunity to hold the case "for further action." See, also, Germanica National Bank *v.* Case, 131 U. S., Appendix CXLIV.

The dominant purpose of the parts of the statute touching this question is that the shareholders of an insolvent national bank shall be liable for its debts "to the extent of the amount of their stock therein," and rules of construction are not to be invoked in a way to defeat that purpose. Under the direction of the comptroller the receiver is authorized to enforce the shareholder's liability; but the power to enforce does not include a power to cut off or limit, and by no proper application of general rules of construction can the statute be so read as to permit the failure of its main design. In the case of Aldrich *v.* Campbell, 38 C. C. A., 347; 97 Fed., 663, the suit was

to enforce a second assessment, the first having been fully
the power of the comptroller to make successive assessment
not denied, was considered and affirmed. In Aldrich *v.*
Fed., 78, the power though denied was affirmed by the cir
for the district of Kentucky and like rulings in unrepor
have been made at circuit in Indiana and elsewhere.

If the statute were one whose meaning could be soug
temporary construction, there is nothing in the practice of
trollers to affect our conclusion. The comptrollers hav
power to make assessments either for the entire amount o
for less, and the evidence is abundant in the reported ca
exercise of ths power in both ways. Of the effect of proc
one way or the other the question was not and in the
things could not have been for their decision, and it does n
that any of them ever assumed to decide it.

The judgment is affirmed.

26 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the
the United States circuit court of appeals for the seven
Greeting:

Because in the record and proceedings, as also in the re
the judgment of a plea which is in the said United Sta
court of appeals, before you or some of you, between Clem
baker, plaintiff in error, and John Perry, as receiver of the
Bank of Kansas City, defendant in error, a manifest error
pened, to the great damage of the said plaintiff in error,
complaint appears, we, being willing that error, if any h
should be duly corrected and full and speedy justice d
parties aforesaid in this behalf, do command you, if jud
therein given, that then, under your seal, distinctly and op
send the record and proceedings aforesaid, with all things
ing the same, to the Supreme Court of the United States
with this writ, so that you have the same in the said Supre
at Washington, within 30 days from the date hereof, that,
and proceedings aforesaid being inspected, the said Supre
may cause further to be done therein to correct that erro
right and according to the laws and customs of the Uni
should be done.

Witness the Honorable M
Seal of the Supreme Court of the United States. Fuller, Chief Justice of th
States, the 29 day of June, in t
our Lord one thousand nine h

JAMES H. McKENNE
Clerk of the Supreme Court of the Unite

Allowed by—
DAVID J. BREWER,
Associate Justice of the Supreme
Court of the United States.

June 29th, 1900.

27 [Endorsed:] Clement Studebaker, plaintiff in error, *vs.* John Perry, receiver National Bank of Kansas City. Writ of error. Filed Jul- 23, 1900. Edward M. Holloway, clerk. Copy deposited for defendant in error in the clerk's office of the United States circuit court of appeals for the seventh circuit. Ward & Hadley, attorneys-at-law, 409 Nat. Bank Commerce bldg., Kansas City, Mo.

28 And afterwards, to wit, on the same day, the 23rd day of July, 1900, in the October term aforesaid, the plaintiff in error filed in the office of the clerk of this court his appeal bond, said appeal bond being in the words and figures following, to wit:

UNITED STATES OF AMERICA, *set:*

CLEMENT STUDEBAKER, Plaintiff in Error,
vs.
JOHN PERRY, Receiver National Bank of Kansas City, Defendant in Error.

Bond.

Know all men by these presents that we, Clement Studebaker and Hugh C. Ward, are held and firmly bound unto John Perry, receiver of the National Bank of Kansas City, in the full and just sum of three thousand dollars ($3,000.00), to be paid to the said John Perry, receiver: to which payment, well and truly to be made, we bind ourselves, our heirs and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of June, in the year of our Lord 1900.

Whereas lately, at the October term of the circuit court of appeals of the United States in and for the seventh judicial circuit, in a suit pending in said court between Clement Studebaker, plaintiff in error, and John Perry, receiver of the National Bank of Kansas City, defendant in error, judgment was rendered against the said plaintiff in error, and the said plaintiff in error has obtained a writ of error to the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Perry, receiver,

29 citing and admonishing the said John Perrry, receiver, to be and appear in the Supreme Court of the United States, at the city of Washington, D. C.

Now, the condition of the above obligation is such that if the said plaintiff in error shall prosecute said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

CLEMENT STUDEBAKER, [SEAL.]
By WARD & HADLEY, *His Att'ys.*
HUGH C. WARD. [SEAL.]

Signed, sealed in the presence of—
I. C. VAN DEVENTER.

Bond approved as a supersedeas this 29th day of June, 1900.
DAVID J. BREWER, *Justice.*

STATE OF MISSOURI, } *ss:*
County of Jackson, }

I, Hugh C. Ward, of the county of Jackson, State of Missouri, the surety named in the within bond, do swear that I am worth in my own right more than ten thousand dollars ($10,000.00) over and above all my debts, liabilities, and legal exemptions.
(Signed) HUGH C. WARD.

Subscribed and sworn to before me this 29th day of June, 1900. My term expires 31st day of December, 1902.
[SEAL.] (Signed) I. C. VAN DEVENTER,
Notary Public, Jackson County, Ill.

Endorsed: Filed July 23, 1900. Edward M. Holloway, clerk.

30 UNITED STATES OF AMERICA, *ss:*

To John Perry, receiver of the National Bank of Kansas City
Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the seventh circuit, wherein Clement Studebaker is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 29th day of June, in the year of our Lord one thousand nine hundred.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

On this — day of July, 1900, in the year of our Lord one thousand nine hundred, personally appeared before me the subscriber and makes oath that he delivered a true copy of the within citation to —— ——, one of the attorneys for defendant in error.

—— ——.

Subscribed and sworn to the — day of July, A. D. 1900.

—— ——.

31 [Endorsed:] Ward & Hadley, attorneys-at-law, 409 Nat. Bank Commerce bldg., Kansas City, Mo.

I. C. Cope, being first duly sworn, upon oath deposes and says that he served the within writ upon Messrs. Wall & Ross, attorneys for John Perry, receiver of the National Bank of Kansas City, by delivering a true copy thereof to Walter W. Ross, a member of the firm of Wall & Ross, on the 23rd day of July, A. D. 1900. He was unable to find the within-named John Perry within the northern district of Illinois.

I. C. COPE,
Deputy U. S. Marshal.

Subscribed and sworn to before me this 23rd day of July, A. D. 1900.

[Seal of M. E. Patterson, Notary Public, Cook County, Ill.]

M. E. PATTERSON,
Notary Public, Cook Co., Ill.

1 service	2.00
1 mile	.06
	2.06

32 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from one to 29, inclusive, contain a true copy of the transcript of record and proceedings in the United States circuit court of appeals for the seventh circuit in the case of Clement Studebaker, plaintiff in error, *vs.* John Perry, as receiver of the National Bank of Kansas City, defendant in error, No. 672, October term, 1899, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this twenty-fourth day of July, A. D. 1900.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed on cover: File No., 17,852. U. S. circuit court appeals, 7th circuit. Term No., 122. Clement Studebaker, plaintiff in error, *vs.* John Perry, as receiver of the National Bank of Kansas City. Filed July 31st, 1900.